IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14336 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALLABH CHHAGANBHAI PATEL

Versus

COMMISSIONER OF POLICE RAJKOT

Appearance:

1. Special Civil Application No. 14336 of 2004

MR ASHISH H SHAH for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Rajkot City, on 23rd August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 23rd August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record

reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration three criminal cases registered against the petitioner under Section 379 of Indian Penal Code and secondly, the detaining authority took into consideration two incamera statements as recorded by the sponsoring authority on 20th August, 2004 and verified by the detaining authority on 21st August, 2004 whose identity is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Three cases came to be registered against the petitioner, one before Rajkot Taluka Police Station, Rajkot on 23rd July, 2002, second before Bhaktinagar Police Station, Rajkot on 11th September, 2002 and third before "A" Division Police Station, Rajkot on 14th August, 2004 under Sections 379 and 114 of the Indian Penal Code. In all cases, it was alleged against the petitioner that he was committed theft of hero-honda motor cycle. The detaining authority considered exhaustively and thoroughly investigation papers in all three cases, registered against the petitioner and came to the conclusion that the petitioner was a habitual offender and was a dangerous person within the meaning of PASA Act.

4. The detaining authority also considered two incamera statements as aforesaid. The first witness referred to an incident occurred on 20th May, 2004, the witness was present at the place of his business at about 5.00 P.M., the petitioner and his accomplice Gautam Ratilal Joshi approached the witness with one hero-honda motor cycle which had no registration plate. The witness was doing the business of auto repairing and, therefore, the petitioner asked the witness to service the motor cycle and to keep the motor cycle with the witness till the said motor cycle was sold. The witness knew that the petitioner was in habit of committing offence of theft of two wheeler vehicles and, therefore, he refused to keep the said motor cycle in his garage. Thereupon, the petitioner and his accomplice started giving abuses to the witness. The witness, thereupon, stated that if the petitioner and his accomplice treated him high-handedly then he would have to file a complaint before the police. The petitioner and his accomplice got excited and started beating the witness and accomplice Gautam Ratilal Joshi took out knife and saw it to the witness and threaten that if the witness attempted to file a complaint in police against them, he would be done to death. The

witness was frightened on his shouts a crowd was gathered, but the same was disbursed because to spread terror, the petitioner and his accomplice rushed towards the crowd with open knife, so people started running helter-skelter. By act of this supplication, the witness could save himself. The second witness narrated an incident occurred on 11th July, 2004, the witness was present at his business place at about 10.00 A.M. when the petitioner and his accomplice Gautam approached the witness along with hero-honda motor cycle, the petitioner offered the said motor cycle to sell to the witness or else he gave alternative to the witness to sell the same to some other persons. The witness refused to purchase the said motor cycle and refused to sell the same on behalf of the petitioner because he knew that the petitioner was involved in theft of two wheeler vehicles. On refusal by the witness, the petitioner and his accomplice got excited and started beating the witness, a crowd was gathered but none dared to rescue the witness. The witness stated that the petitioner was harassing an innocent citizen like him and for that he would go to the police and file a complaint against the petitioner. Thereupon, the petitioner took out knife and saw it to the witness and threaten that if the witness attempted to file any complaint against them, he would be done to death. To create terror, the petitioner with open knife went towards the crowd gathered near the place, so the persons started running helter-skelter and atmosphere of terror was spread with great difficulty. By act of this supplication, the witness could save himself.

5. From the above materials, the detaining authority came to the conclusion that the petitioner was engaged in activities of stealing vehicles. The petitioner was headstrong and ferocious person and after forming gang to fulfil common intention committed theft of hero-honda motor cycle. It was also concluded by the detaining authority that the petitioner was employing bullying tactic in the public and was beating innocent citizens and traders. The detaining authority came to the conclusion that the activities of the petitioner were required to be prevented forthwith, because such activities were prejudicial to the maintenance of public order. After taking into consideration, other remedies available against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act as dangerous person. The detaining authority, therefore, passed an order of detention of the petitioner, which is under challenge in this petition.

6. Learned advocate Mr.A.H. Shah for the petitioner and learned AGP Mrs.H.B.Punani for the respondent No.3 were heard at length.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible and cogent materials placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

8. To reach to the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon the credible and cogent materials indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to the life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and in the cases falling within the category of breach of public order.

9. Referring to the three criminal cases filed against the petitioner under the Indian Penal Code for theft of hero-honda motor cycle and going through the investigation papers as placed on record, it is found that these cases came to be registered against the detenu because he was found to have committed a breach of penal statue of the country. However, merely filing of cases under the penal statue would not result in conclusion that the activities of the petitioner were disturbing the public order. At the most, the petitioner might have committed a breach of provisions of law for which the petitioner may be tried and may be punished, if found guilty. But surely the act constituting the offences as alleged and as revealed through the investigating papers, cannot be said to have affected the even tempo of the life of the community nor the activities indicate that society at large or section of society or community or section of community was affected by such activities. These cases filed against the petitioner may be instances of breach of law and order, but cannot be branded as activities disturbing the public order.

10. While referring to two incamera statements as

relied upon by the detaining authority, it must be borne in mind that the detaining authority while reaching to the subjective satisfaction about the alleged activities of the petitioner must consider fall out, reach and impact of the activities of the petitioner and, thereafter, to come to the conclusion that the alleged activities were capable of disturbing the public order. Two incidents as narrated through incamera statements reveal individual disputes then to involve the society at large or disturbing the even tempo of the life of the community. The potentially of the act alleged through incamera statements, even from the bare reading of them are not capable to be branded the activities disturbing the even tempo of the life of the community or society at large. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking incamera statements on there face value those incidents may be instances of disturbing of law and order which could be taken care by general law and by not stating reasoning of such activities to be branded to be disturbing the public order.

11. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.20, 21 and 22 as under.

"20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from

maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases.

12. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki [supra] and, therefore, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by alleged activities of the petitioner, cannot be said to be legal, valid and in accordance with law. The order passed by the detaining authority is, therefore, required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by the Police Commissioner, Rajkot City on 23rd August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu Vallabhbhai Chhaganbhai Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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